

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: §
DALE ROBERT CALCARONE § CASE NO: 05-43677
Debtor(s) §
§ CHAPTER 7

**MEMORANDUM OPINION CONCERNING MOTION TO RECONSIDER (DOC # 24)
AND DENYING MODIFICATION OF ORDER GRANTING RELIEF FROM STAY
(DOC # 22)**

In docket # 24, the Debtor asks the Court to reconsider its order (docket # 22) granting relief from the automatic stay. The Court has considered the Debtor's argument, and finds that the argument has no merit.

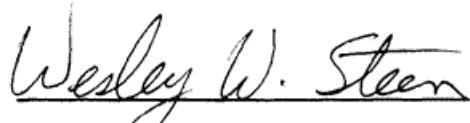
The Debtor has filed a motion to sell certain property. Option One Mortgage Corporation, the lien creditor, filed a motion to lift stay. The Court granted the motion to lift stay since the estate had no interest in the property.

This is a chapter 7 case. If property is exempt or abandoned by the trustee, it is ceded to the Debtor and ceases to be property of the estate. The Debtor has three options with respect to such property: the Debtor may surrender the property, the Debtor may redeem the property, or the Debtor may reaffirm the debt. In this case, the Debtor did none of these, effectively abrogating his rights and obligations under the Bankruptcy Code.

In the order granting relief from the stay, the Court included a provision that the order was binding notwithstanding the conversion of the case to another chapter of the Bankruptcy Code. The Debtor asks the Court to reconsider that provision. The Court notes that the Debtor has not sought to convert the case, and therefore the issue is hypothetical at most.

The Court concludes that effect of the provision referenced by the Debtor is merely a statement that the order is a final order and would not be reconsidered in case of conversion. If Debtor wanted relief under a different chapter of the Bankruptcy Code, the Debtor should have filed under that chapter initially or should have converted the case prior to entry of the order granting relief from the stay.

SIGNED 11/29/2005.


WESLEY W STEEN
United States Bankruptcy Judge